

**BEFORE THE INDIANA
CASE REVIEW PANEL**

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|--|---|----------------------------|
| In The Matter of J.D., |) | |
| Petitioner |) | |
| |) | |
| and |) | CAUSE NO. 021101-26 |
| |) | |
| The Indiana High School Athletic Assoc. (IHSAA), |) | |
| Respondent |) | |
| |) | |
| Review Conducted Pursuant to |) | |
| I.C. 20-5-63 <i>et seq.</i> |) | |

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

This is a dispute involving the application of Respondent's by-law **Rule C-20–Undue Influence**.¹
This rule, in pertinent part, reads as follows:

Rule C-20-1

The use of undue influence by any person or persons to secure or to retain a student, or to secure or to retain one or both of the parents or guardians of a student as residents, may cause the student to be ineligible for high school athletics for a period not to exceed 365 days and may jeopardize the standing of the high school in the Association.

...

NOTE 2: This rule shall include any undue influence that may be exerted by anyone on a student who has not yet entered the ninth grade, to enroll in a school other than their home school.

...

Rule C–20-4

Parents of a student from a non-feeder school that makes contact with a member

¹The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys, “G” for Girls), but most of the by-laws are “common” to all potential athletes and, hence, begin with “C.” All references are to the IHSAA’s By-Laws for the 2002-2003 school year.

school should be referred to the Principal.

a. Initial meetings shall not be with athletic department personnel.

...
Q & A

...

Q.2 Why should a school be penalized because some person outside of school uses undue influence?

A. Usually a school is not penalized unless it is involved or uses the student in question in athletics. In the second place, the results are the same whether some person in school or some person outside of school uses undue influence: An athlete that has been retained or secured through the use of undue influence and the school that uses such an athlete on teams in interschool athletic competition profits by the use of undue influence.

J.D. is a freshman at Shelbyville High School (hereafter, "SHS"). He previously attended Waldron Jr.-Sr. High School (hereafter, "WJHS"). He continues to reside in the WJHS attendance district. He is a "cash transfer" to SHS.² He has an older sister who was already enrolled at SHS. J.D. plays basketball. He is 6' 4" and approximately 200 lbs. The transfer to SHS was motivated by concerns of his parents that academic offerings at WJHS were limited. SHS, which is four times the size of WJHS, has many more course offerings, including offerings in J.D.'s academic areas of interest, mathematics and science. Evidently, there was much speculation in the WJHS area that J.D. might transfer after his eighth grade year. Chance meetings at basketball games were interpreted according to one's allegiance.

Before J.D. had enrolled, there was a dinner meeting between J.D. and his family and the SHS basketball coach and his wife. Although J.D.'s parents knew the SHS basketball coach and his wife apart from high school athletics, the two couples did not socialize. It was this incident that resulted in a report to the Respondent. Another contact was made by J.D.'s mother with the SHS athletic director prior to his enrollment. Respondent advised the SHS athletic director, when he called for clarification as to whether J.D. could participate in the SHS summer program, that a complaint had been filed.

Following SHS's investigation, the Respondent's Commissioner, on September 12, 2002, notified SHS, *inter alia*, that it would be placed on probation for the 2002-2003 school year, reprimands were issued to the SHS basketball coach and athletic director, and J.D. was declared to have "limited eligibility" for the duration of the probation.³ Petitioner, on September 17, 2002, appealed the

²See I.C. 20-8.1-6.1-3.

³**Limited eligibility** is defined under **Rule C-19**. A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not

Commissioner's decision with regard to him to the Respondent's Review Committee. A review was conducted on October 10, 2002. The Review Committee issued its decision on October 15, 2002, affirming the Commissioner's decision. It is from this decision that Petitioner appeals to the Case Review Panel.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, on November 1, 2002, requested a hearing before the Case Review Panel (CRP).⁴ On that date, the Petitioner and Respondent were advised of their respective hearing rights. Petitioner was provided with consent forms in order to indicate whether this hearing would be opened or closed to the public. Petitioner responded on November 11, 2002, indicating that he wished for the hearing to be closed to the public. Hearing was set for December 3, 2002.

The record of the proceedings before the Review Committee was photocopied and transmitted to CRP members on November 12, 2002. Petitioner requested the issuance of subpoenas for the attendance of certain witnesses. These were provided on November 27, 2002.

The parties appeared on December 3, 2002, for the hearing. Petitioner and Respondent were represented by counsel. A brief pre-hearing conference was conducted prior to the hearing, during which time Petitioner submitted an additional document. Respondent objected to the document based on its lack of relevancy. The objection was noted but overruled. Petitioner could explain its relevancy during the hearing.⁵

The following Findings of Fact and Conclusions of Law are based upon the evidence and testimony presented at the hearing in this matter, as well as the record as a whole. All Findings of Fact are based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).⁶

participate in interschool athletics as a member of a varsity athletic team. For J.D., he could play freshman and junior varsity basketball but not varsity basketball.

⁴The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP's decision does not affect any By-Law of the IHSAA.

⁵The hearing was conducted before John Earnest, Chair, and CRP Members Pamela A. Hilligoss, Michael L. Ross, Brenda K. Sebastian, Ear H. Smith, Jr., and Brad Tucker.

⁶It should be noted from the outset that SHS officials often referred to "technical violations" of the Respondent's by-laws. Insofar as the CRP does not have jurisdiction to review Respondent's

FINDINGS OF FACT

1. Petitioner is a freshman enrolled in SHS as a “cash transfer” student. He is a member of the SHS basketball team. He lives within the attendance district for WJHS, and attended school there through his eighth grade. He has three older sisters and one younger sister. His two oldest sisters graduated from WJHS. The other older sister transferred to SHS beginning with her freshman year. She participates in basketball at SHS. She is a senior this year. Petitioner’s parents are involved in their children’s education and athletic events, attending athletic contests at both WJHS and SHS during the past few years. Petitioner’s mother has been particularly active volunteering her assistance at SHS. Petitioner is an academically capable student, earning A’s and B’s in his coursework. He is particularly interested in mathematics and science.
2. Petitioner’s parents consider SHS to be a better school academically than WJHS. SHS is four times the size of WJHS and offers a greater variety of course offerings and direct instruction than WJHS. Petitioner’s father attended SHS even though he lived within the attendance district of WJHS, graduating in 1972. The SHS basketball coach also attended SHS, graduating in 1970. Petitioner’s father and the SHS basketball coach were acquainted with each other during this time but were not social acquaintances. The SHS basketball coach’s wife lived next door to Petitioner’s father’s stepmother.
3. The SHS basketball coach is starting his third year at that school. Prior to that time he had been involved in NCAA-sanctioned sports at the collegiate level. Part of his responsibilities as SHS basketball coach is to evaluate the middle school basketball programs. In this role, he attended a basketball game between WJHS and the middle school that feeds into SHS. This game occurred on November 12, 2001. An exchange of pleasantries occurred between Petitioner’s parents and the SHS coach. WJHS did not report this until it became known that Petitioner would transfer to SHS.⁷
4. On or about May 4, 2002, the WJHS basketball coach wrote a somewhat lengthy letter to

decisions with respect to its constituent members, see I.C. 20-5-63-2, I.C. 20-5-63-7(b), the CRP does note that Respondent never indicated that SHS had any intent to violate its by-laws.

⁷The uncontradicted testimony is that the conversation was an exchange of pleasantries. The CRP has indicated in the past it will not credit gossip or innuendo, especially from unnamed sources. For this reason, the CRP will not detail the other encounters at basketball games. These appear to be chance encounters. The direct testimony as to any conversations do not indicate anything untoward was discussed.

Petitioner's parents, encouraging them to remain in WJHS. He also projected a bright basketball future for WJHS and for Petitioner should he remain at the program. He also indicated that he would coordinate his summer basketball program so that it would not conflict with Petitioner's involvement in AAU basketball. He was insistent that a decision be made by or before May 16th.

5. Petitioner's mother telephoned the SHS basketball coach during the week of May 13th in an attempt to arrange a meeting to discuss ramifications of the WJHS basketball coach's letter. A meeting could not be arranged within the next few days. It was decided that the SHS basketball coach and his wife, who knew Petitioner's parents, would have dinner the evening of May 16, 2002, at a restaurant in Columbus. The restaurant is one favored by the SHS basketball coach. Petitioner, his parents, and the SHS basketball coach and his wife had dinner on that evening. The other members of Petitioner's family did not participate. Someone observed the gathering and called someone else connected with WJHS. This latter person then called the WJHS principal, who lives in Columbus. The principal went to the restaurant and observed the dinner meeting. He did not make his presence known.⁸
6. The SHS basketball coach answered questions regarding AAU basketball and his summer program. He was unaware that his contact was proscribed by Respondent's rules, specifically **Rule C-20-1, Note 2**. Petitioner's parents paid for the dinner. There is no evidence that the SHS basketball coach attempted to recruit Petitioner.
7. In early June, Petitioner's mother had an appointment to see the SHS guidance counselor. Her intent was to obtain enrollment papers for Petitioner and his younger sister, who was also going to transfer. The guidance counselor was otherwise engaged at the time. Petitioner's mother decided to walk down to the athletic area to obtain information regarding open facility use during the summer. She met the SHS athletic director, whom she knew from her daughter's participation SHS athletics. She asked him whether Petitioner could participate in the open gym during the summer. The athletic director was uncertain and decided to contact Respondent's Commissioner. Following conversations with the Commissioner, he advised the Petitioner's mother that Petitioner could not participate because he was not yet enrolled. The Commissioner also advised the athletic director that a complaint had been received concerning Petitioner and his pending enrollment in SHS. As he had not yet enrolled, no action had been taken.

⁸Although invited to do so, the CRP will not read furtive intent in the selection of a restaurant in Columbus. Columbus is not that far from the homes of either parties. The explanation for the selected site—it was a favorite of the SHS basketball coach—is a credible explanation.

8. Petitioner enrolled in SHS on June 21, 2002. The SHS athletic director informed Respondent of the enrollment. The SHS principal, who had just assumed his responsibilities, conducted an investigation, determining that violations had occurred but the violations were the result of poor judgment. There was no intent to violate any IHSAA rules. Later, the Commissioner met personally with Petitioner's parents and SHS officials. Following this meeting, the SHS principal, in consultation with the local superintendent, recommended on September 10, 2002, several sanctions, including "limited eligibility" for Petitioner during the first semester.
9. Respondent's Commissioner, on September 12, 2002, accepted the recommended sanctions, except that Petitioner's limited eligibility was extended to include the period of probation for SHS (the end of the 2002-2003 school year). SHS recommended and the Respondent concurred that internal procedures were necessary to ensure that SHS athletic personnel were aware of the Respondent's by-laws. The SHS basketball coach and athletic director received letters of reprimand.

CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The Petitioner timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. The CRP notes that "undue influence" is not otherwise defined other than by the circumstances involved. Such a term defies precise definition. As a result, the term encompasses both those who deliberately seek to exercise "undue influence" in a direct and deliberate attempt to violate the rules as well as those who unwittingly do so. This is a situation that involves the latter and not the former. There was no intent to violate the Respondent's by-laws but violations did occur. There is no disagreement that such occurred. The disagreement centers on the Petitioner's sanction and whether the sanction was excessive when all circumstances are considered.
3. The chance encounters at various basketball venues with present and former SHS athletic department officials were readily explained without rebuttal. These encounters were not athletically motivated but were the result of typical meetings, especially in rural areas, where children are participating in athletic competition.

4. Petitioner's parents believe that SHS offers a more academically challenging curriculum for Petitioner than that offered by WJHS. The fact that the father attended SHS, Petitioner's older sister has attended SHS as a "cash transfer" student for three years, and Petitioner's younger sister was transferred at the same time he was supports a conclusion that the transfer was not athletically motivated.
5. The meeting in early June of 2002 with the athletic director was likewise understandable. The Petitioner's sister has participated in three sports at SHS (basketball, volleyball, and tennis), and is presently a member of the SHS girls' basketball team. She is in her senior year at SHS. His mother has been very involved as a volunteer at the school. The family would have known the athletic director, and he would have certainly known them. The occurrences on that date—meeting with the guidance counselor, going down to the athletic area while waiting for the guidance counselor to be free, discussing open gym participation—are innocent enough, but Petitioner had not yet been enrolled. The athletic director is charged with knowing the by-laws in this regard. His confusion was evident because the family already had a child enrolled in SHS and participating in athletics. He contacted Respondent for guidance and, through this conversation, understood that Petitioner was not yet enrolled in SHS. He did advise the Petitioner's mother that Petitioner could not participate until he was enrolled. This contact, although unintentional, violated **Rule C-20-4**.⁹
6. The meeting at the Columbus restaurant, although a social gathering of people who knew one another, Petitioner's parents and the SHS basketball coach and his wife did not socialize previously. The dinner meeting did not include any of Petitioner's siblings. The conversation did involve discussion of athletics, although AAU basketball was a primary concern for Petitioner. The SHS basketball coach, who had been involved in NCAA-sanctioned sports for thirty years, was unaware that such contact with a student from a non-feeder school who has not yet enrolled in SHS violated Respondent's by-laws, specifically **Rule C-20-1, Note 2**, which reads as follows: "NOTE 2: This rule shall include any undue influence that may be exerted by anyone on a student who has not yet entered the ninth grade, to enroll in a school other than their home school." This rule is applied to middle school students, which Petitioner

⁹This rule reads in pertinent part: "Parents of a student from a non-feeder school that makes contact with a member school *should be referred* to the Principal.

a. Initial meetings *shall not be* with athletic department personnel...." (Emphasis added.) Petitioner argues that this rule is a discretionary one. While it is true that "should be referred" is discretionary in nature, this sentence is not to be read in isolation. It is qualified by the latter mandatory language. The athletic director should have ceased the conversation and directed Petitioner's mother to the principal.

was at the time of the dinner meeting. The SHS basketball coach acknowledges that he should have known of the rule and its potential consequences.

7. The CRP concludes that the SHS basketball coach did not exert the type of “undue influence” that involves direct, impermissible recruiting. The “undue influence” in this case arises solely from the circumstances. While the dinner meeting has had unfortunate consequences, the sanction imposed by the Respondent does take into consideration the parties did not intend to violate **Rule C-20**. Under the rules, the Petitioner could have been declared ineligible for any athletic participation for 365 days. Although it is unfortunate that Petitioner has been penalized for the unintentional activities of adults, the sanction is a relatively mild one considering his age, his grade placement, and his relative need to improve his athletic skills.

ORDER

The Case Review Panel, by a vote of 6-0, upholds the decision of the Respondent to accord “limited eligibility” to Petitioner for the 2002-2003 school year.¹⁰

DATE: December 9, 2002

/s/ John L. Earnest, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.

¹⁰The difficulty the CRP had with assessing the sanction relative to the facts in this situation were evident in the votes. By statute, the CRP must have the affirmative votes of five (5) members to take any action. I.C. 20-5-63-7(a)(6). The first two votes, both to uphold the Respondent’s decision relative to Petitioner, failed on identical 4-2 votes. Its eventual decision was made on the third vote.